(1)

Supreme Court, U.S.

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UNITED STATES SUPREME COURT

PETITIONER,

THOMAS G. DEAN

V.

RESPONDENTS,

CHASE MANHATTAN MORTGAGE CORP., RESURGENCE MARKETING & REAL ESTATE, FORREST HOMES, US DEPT. OF HUD, US DISTRICT JUDGE WILLIS B. HUNT, AND THE CLAIRMONT LODGE.

PETITION FOR WRIT OF CERTIORARI TO ELEVENTH CIRCUIT COURT OF APPEALS

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THE PETITIONER

Thomas G. Dean

41 pp

QUESTIONS PRESENTED FOR REVIEW

(1) Whether the court of appeals for the eleventh Circuit properly sustained dismissal of complaint against Chase Manhattan Mortgage Corporation for insufficiency of service of process when complaint was served upon Chase Manhattan by the sheriff of the county in which Chase Manhattan hold it's office under rule **4(d) Fed. Rul. Civ. Proc.** as service of summons by the law of the State of Georgia per **O.C.G.A. ss 9-11 -4(c)** ?

(2) Whether petitioner's unopposed affidavits attached to the complaint, fail to state a claim for relief in the claim under **Federal Fair Housing Act, (42 USCA ss 3604-3605 & 3613)** alleging racial discrimination in rental decisions by Clairmont Lodge?

(3) Whether unopposed financial affidavits attached to the complaint fail to state a claim for relief effectively claiming that petitioner was qualified to purchase pro-

perty and was refused by respondents/defendants because of plaintiff's race or sex, in suit under **42 USCA ss 3604-3605 & 42 USCA ss 3613.**

(4) Whether court of appeals for the eleventh circuit properly sustained dismissed complaint against U.S. Dept. of Housing & Urban Developement for lack of subject matter jurisdiction when jurisdiction is alleged to exist under **42 USCA ss 3604-3605 & 42 USCA ss 3613** in light of **28 USCA ss 2679(b)(2)** ?

(5) Whether court of appeals for the eleventh circuit properly dismissed action against Federal judge in which was alleged abuse of process in prior suit under fair housing act as disparate treatment against plaintiff's request for appointment of attorney under **42 USCA ss 3613(b)(1)** in light of **28 USCA ss 1346(b) 28 USCA ss 2679(b)(2) & 2680(h)** ?

(6) Whether plaintiff in fair housing suit is entitle, upon his request, under **42 USCA ss 3613(b)** , to appointment of attorney ?

(7) Whether court of appeals for the eleventh circuit properly sustained the denial of petitioners motion for cost of personal services which was essentially a motion for summary judgement on the claim including costs and attorney fees under rule **56(a) Fed. Rul. Civ. Proc** ?

(8) Whether the court of appeals for the eleventh Circuit properly sustained motion to dismiss for failure to state a claim in absence of answer by any defendant in light of rule **12(h)(2) & 12(c) Fed. R. Civ. Proc.** ?

(9) Whether court of appeals for the eleventh circuit properly sustained the denial of allegations of the complaint in absence of answer by the defendants in light of rule **8(d) & 12(c) Fed. Rul. Civ. Proc.** ?

(10) Whether court of appeals for the eleventh Circuit properly sustained dismissal of complaint for insufficiency of service of process in absence of answer by defendant in light of waiver provisions of rule **12 (h)(1) Fed. Rul. Civ. Proc.** ?

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STATEMENT OF JURISDICTION

On **June 6, 2001** the United States Court of Appeals for the eleventh circuit sustained the dismissal of petitioner action filed pursuant **42 USCA ss 3613** claiming, inter-railia, racial discrimination in financing of residential real estate related transactions in the United States District Court for the Northern District of Georgia Atlanta Division. No petition for rehearing was taken. The jurisdiction of the Supreme Court on Certiorari is invoked under **28 USCA ss 1254(1)** .

CONSTITUTIONAL STATUTES INVOLVED

(i) **28 USCA ss 1254(1)** states as follows:

"Cases in the courts of appeals may be reviewed by the supreme court by the following methods:

(1) By writ of certiorari upon application of any party to any civil or criminal case, before or after rendition of judgement or decree."

42 USCA ss 3605 states as follows:

Discrimination in residential real estate-related transactions

(a) **In General**

It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such transaction, or in the terms or condition of such transaction, because of race, color, religion, sex, handicap, familial status, or, national origin.

(b) **Residential real estate-related transaction" defined**

As used in this section, the term "residential real estate-related transaction" means any of the following:

(1) The making or purchasing of loans or providing other financial assistance-

(A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(B) secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

(c) **Appraisal exemption**

Nothing in this subchapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race color, religion, national origin, sex, handicap, or familial status.(Pub. Law 90-284, Title VIII, ss 805, Apr. 11, 1968, 82 Stat. 83; Pub. L. 93-383, Title VIII, ss 808(b)(2), Aug. 22, 1974, 88 Stat. 729; Pub. L. 100-430, ss 6(c), Sept. 13, 1988, 102 Stat. 1622.)

42 USCA ss 3613 states as follows:

Enforcement by private persons

(a) **Civil action**

(1)(A) An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or termination of an alleged discriminatory housing pra-

ctice, or the breach of a conciliation agreement entered into under this subchapter, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(B) The computation of such 2 year period shall not include any time during which an administrative proceeding under this subchapter was pending with respect to a complaint or charge under this subchapter based upon a discriminatory housing practice. This subparagraph does not apply to actions arising from breach of a conciliation agreement.

(2) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under section 3610(a) of this title and without regard to the status of any such complaint, but if the secretary or a State or local agency has obtained a conciliation agreement with the consent of an aggrieved person no action may be filed under this subsection by an aggrieved person with respect to the alleg-

ed discriminatory housing practice which forms the basis for such complaint except for purposes of enforcing the agreement.

(3) An aggrieved person may not commence a civil action under this subchapter with respect to an alleged discriminatory housing practice which forms the basis or a charge issued by the secretary if an administrative law judge has commenced a hearing on the record under this subchapter with respect to such charge.

(b) **Appointment of attorney by court**

Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may-

(1) appoint an attorney for such person; or

(2) authorized the commencement or continuation of a civil action under subsection (a) of this section without payment of fees, costs, or security, if in the opinion of the court such person is financially unable to bear costs of such action.

(c) **Relief which may be granted**

(1) In a civil action under subsection (a) of this section, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award plaintiff actual and punitive damages, and subject to subsection (d) of this section, the court may grant as relief, as the court deems appropriate, any permenant or temporary injunction, temporary restraining order, or other order (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate).

(d) **Effect on certain sales, encumbrances, and rentals**

Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of a complaint with the secretary or civil action under this subchapter.

(e) **Intervention by the Attorney General**

Upon timely application, the Attorney General may intervene in a civil action, if the Attorney General certifies that the case is of general public importance. Upon such intervention the Attorney General may obtain such relief as would be available to the Attorney General under section 3614(e) of this title in a civil action to which such section applies.

(Pub. L. 90-284, Title VIII, ss 813, as added Pub. L. 100-430, ss 8(2), Sept. 13, 1988, 102 Stat. 1633.)

28 USCA ss 1346(b) states as follows:

(b) Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on or after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or

wrongful act or omission of any employee of the government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the lawof the place where the act or omission occurred.

28 USCA ss 2679(b)(2) states as follows:

Paragraph (1) does not extend or apply to a civil action against an employee of the Government -

(A) which is brought for a violation of the Constitution of the United States, or

(B) which is brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized. . . .

28 USCA ss 2680 states as follows:

The provisions of this chapter and section 1346(b) of this title shall not apply to -

. . . (h) any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution,

abuse of process, libel, slander, misrepresentation, deceit, or interference with contractual rights: Provided, That, with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of this chapter and section 1346(b) of this title shall apply to any claims arising, on or after the date of the enactment of this proviso, out of assault, battery, false imprisonment, false arrest, abuse of process or malicious prosecution. For the purposes of this subsection, "investigative or law enforcement officer" means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law. . . .

Rule 8(c)&(d) Fed. Rul. Civ. Proc. states as follows in pertinent part:

. . . " Allegations in a pleading to which responsive pleading is required shall be deemed admitted; and allegation in a pleading to which no responsive pleading

is required shall be deem denied. . . ."

" All allegations of the complaint shall be deemed admitted when not denied in a responsive pleading."

Rule 4(d) Fed. Rul. Civ. Proc.,

in pertinent part:

" Service of process may be made in the manner of effecting service by the laws of the state where the district court is held. . . ."

O.C.G.A. ss 9-11-4(c) *Summons - By whom served*

Process shall be served by the sheriff of the county where the action is brought or where the defendant is found, or by the sheriff's deputy, or the marshal or sheriff of the court, or by such official's deputy, or a citizen of the United States specially appointed by the court for that purpose, or by someone who is not a party and is not younger than 18 years of age and has been appointed as a permanent process server by the court in which the action is brought. . . . When service is to be made within this state, the person making such serv-

ice shall make the service within five days from the time of receiving the summons and complaint: but failure to make service within the five day period will not invalidate a later service. . . .

Rule 12(c) Fed. Rul. Civ. Proc. states as follows:

Motions for judgement on the Pleadings. After pleadings are closed but within such time as not to delay the trial, any party may move for judgement on the pleadings. If on a motion for judgement on the pleadings, matters outside of the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgement and disposed of as provided in rule 56, and all parties shall be given opportunity to present material made pertinent to such a motion by rule 56.

Rule 12(h)(1) Fed. Rul. Civ. Proc. states as follows: "A defense of lack of jurisdiction over the person, improper venue, insufficiency of service of process is waived (A) if omitted from a motion in the circumstan-

ces described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by rule 15(a) to be made as a matter of course."

Rule 4(m) Fed. Rul. Civ. Proc. states:

Rule 12(h)(2) Fed. Rul. Civ. Proc. states as follows: " A defense of failure to state a claim upon which relief can be granted, . . . may be made in any pleading permitted or ordered under rule 7(a), or by motion for judgement on the pleadings, or at the trial on the merits."

STATEMENT OF THE CASE

(1) On August 30, 1999 petitioner filed civilrights action in the United States District Court for the Northern District of Georgia, Atlanta Division claiming that respondent Chase Manhattan Mortgage Corp., Resurgence Marketing & Real Estate Inc., Forrest Homes and The U.S. Dept. of HUD conspire to refuse petition financing to purchase residential real estate because of petition-

er's race. Petitioner's contentions were based upon the fact that the reasons given to petitioner for the refusal to finance petitioner was that petitioner could not produce his last two years of tax returns and because petitioner was a bankrupt debtor and currently paying bankruptcy payments. The petitioner contend that such a denial is racial discrimination because ordinarily and as advertised by most mortgage providers bankruptcy is not ground to refuse mortgage to otherwise qualified applicant, and respondents' demand for tax returns were being used to reduce gross income by expenses claimed on tax return and hence to reduce the buying power of black applicants. Petitioner claim black applicants because all of the tenants and applicants in subject subdivision were black applicants and tenants and the practice of refusing financing to debtors and reducing purchasing power by deducting expenses claimed on tax return was not practice in white subdivisions or by ads of other lenders. .The practice of refusing financing to bankrupt debtors

is prohibited by **11 USC ss 525** and the practice of requiring deductions for expenses from gross income is contrary to **16 CFR ss 203.33** and according, the reasons for discriminating against petitioner is not a ligitimate bona fide governmental interest and while such practices are only directed at black subdivisions the practices are **disparate treatment** and therefore petitioner carry suit coupled with the fact that an employee of the respondents uttered the word nigger toward petitioner while petitioner was applying for housing and financing. (2) In a prior action now pending in the court of appeals petitioner made identical claim against serveral other defendants in the same residential subdivision and in that case as well as the second action petitioner requested appointment of attorney under the provisions of **42 USC ss 3613(b)(1)** and the motion was refused by the court even though petitioner was not indigent. According such refusal to appoint attorney petitioner included U.S. District judge Willis B. Hunt in the action for abuse of process as

the text of **42 USC ss 3613(b)(1)** suggest that appointment of attorney under the section is warranted upon application whether the applicant is indigent. Such is the case, the judge was guilty of abuse of process and desparate treatment in application to appoint attorney.

(3) As a third claim, petitioner claimed that respondent Clairmont Lodge refuse implied contract to continue renting property to petitioner because of petitioner's race. This claim stemmed from Clairmont Lodges offer to continue to rent for an additional period without raising the rent rate and it's reneging therein. Because the race of tenants of the Clairmont Lodge are predominately low-income households minorities, petitioner claimed that race was the cause of the reneging and thus petitioner filed suit under fair housing act of United States **(42 USC ss 3601 et seq)** .

Petitioner also claimed that Clairmont Lodge by it's employees was engaged in obstruction of justice of their parading and hissing in opposition to prior suits filed by

petitioner. Petitioner alleged that such parading and hissing constituted conspiracy or ratification by the paraders of the wrongs complained in in the prior suits.

(4) At the time the complaint was filed petitioner was not aware of the 1993 amendment of **rule 4 Fed. R. C.v Proc.** and requested waiver of service of summons as under form 18A.

(5) The respondents did not respond to the request for waiver and thereafter petitioner caused the summons and complaint to be served by the sheriff of the counties in which the respondents reside as provided by state law and **rule 4 Fed. Rul. Civ. Proc.**

(6) Upon the service of the complaint by the sheriff of the counties where the respondents reside, all of the respondents moved to dismiss action purportedly under rule 12(b)(6) and absent the filing of an answer by any respondents the respondents claimed lack of jurisdiction.

(7) Petitioner opposed the motions to dismiss claiming that the motion was inappropriate filed prior to answer

of respondents **(see rule 12(c), 12(h)(2) Fed. R. Civ. Proc.)**; and the respondents did not state a meretorious defense since alleging failure to state a claim under **42 USC ss 3613** since the respondents donot state a meretorious defense in claiming that petitioner was denied financing because petitioner was bankrupt debtor when by affidavits attached to the complaint, financial affidavit demonstrated that petitioner qualified by petitioner current financial ability even though petitioner was in **chapter 13 bankruptcy** in light of down payment projected by petitioner; petitioner further claimed that **16 CFR ss 203.33** did not require that expenses cited on income tax returns be deducted from gross income since the determination of current financial ability to pay back a loan is determined by an applicant's gross income not net income; that the respondents' reasons for require forbidden requirements for mere racial discrimination.

(8) Petitioner further contended that the court had jurisdiction of the federal respondents under **42 USC ss 3605**

coupled with 42 USC ss 3613 in light of the fact that as petitioner claimed that the constitution or a law of the United States Had been violated of **11 USC ss 525 and 16 CFR ss 203.33** suit under federal tort claims act was is an exclusive remedy and the respondents fit the description of an employee of the United States Government in taking and processing applications for mortgage insurance and offering other HUD benefits and programs.

(9) Petitioner further contended that respondent Clairmont Lodge did not state a meretorious defense since alleging that because a rate hike applied to all residents of the Clairmont Lodge Clairmont Lodge did not discriminate against petitioner and that petitioner did not prove racial discrimination by Clairmont Lodge because no rate hike was promised by Clairmont Lodge in Letter sent to all residents of Clairmont Lodge and that petitioner did not have to prove racial discrimination under Federal Fair Housing Act even though racial discrimination

was alleged in complaint and that the court was required to treat allegations of the complaint as true under **rul. *8(d) & 12(b)*** when the respondents' motion to dismiss was lone paper filed by respondents.

(10) Based upon petitioners contention stated ante-herein and similar contentions petitioner moved for judgement in favor of the petitioner in paper denominated as motion for cost of personal services of the petitioner and filed pursuant to **rule 56 Fed. R. Civ. Proc.**.

(11) After consideration of the papers the district court granted the respondents motions and petitioner appealed to the Eleventh Circuit Court of Appeals.

(12) On appeal the Eleventh Circuit sustained the dismissal of complaint by the district and from such order or judgement petitioner now petition to Supreme Court for certiorari.

REASONS FOR GRANTING CERTIORARI

As noted until, The district court for the northern district of Georgia dismissed the petitioners action under the

Federal Fair Housing Act for failure to state a claim but in absence of an answer being filed in the case. Such action of the district court is contrary to the requirements of **Rule 12(c) Fed. Rul. Civ. Proc.** as rule **12(c)** requires that an answer be filed prior to the courts' granting of motion to dismiss for failure to state a claim. **Branch Int'l Svcs. v. Budde, 1995, 890 F.Supp. 659, aff'd 89 F.3d 832; Rooding v. Peters , 1995, 92 F.3d 578 on remand, 173 FRD 511; Progressive Insurance Com. v. Estate of Crone, 1995, 894 F.Supp. 383 Karsten Mfg. Corp v. Oshman Sporting Goods, 1994, 869 F.Supp. 778; Borough of Sayreville v. Union Carbide Corp., 1996, 923 F.Supp. 671; Carey v. Conrail, 1992, 810 F.Supp. 164; Allstate U.S., 1994, 860 F.Supp. 653; no supreme court cases were located on this subject matter** Likewise, the district court denied the allegations of the complaint when ruling on motion to dismiss for failure to state a claim and again such action of the district court is contrary

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to **rule 8(d) Fed. Rul. Civ. Proc. and 12(b) Fed. Rul. Civ. Proc.** as these two rules require that allegations of the complaint be treated as true and construed in favor of the petitioner. **Conely v. Gibson, 355 US 41, 78 S.Ct. 99, 2 L.Ed.2d 80, Mizell v. N. Broward Hosp. 392 F.2d 580; Bobby Jones Garden Apts. v. Suleski 391 F.2d 172, Robertson v. Johnson, 376 F.2d 43; Muncaster v. Baptist, 367 F.Supp. 1120, aff'd, 507 F.2d 1279; Wetherington v. Phillips, 1974, 380 F.Supp. 426, affirmed 526 F.2d 591;In re Dept. of Energy SWE Lit., 1990, 752 F.Supp. 1441; Darlene L v. Brd. of Ed.,1983, 568 F.Supp. 1340; Mazzula V. MLIC, 1980, 487 F.Supp. 1299; others such like.**

Here, the district court has refused to grant judgement for affidavits attached to the complaint when no counter affidavit was filed by any respondent and such practice by a court is unauthorized under both **rules 12 & 56 Fed. Rul. Civ. Proc.** and is ordinarily not practiced by

Federal Courts see **Gordon v. Watson, C.A. Fla., 1980, 622 F.2d 120; Oglesby v. Terminal Transp. Co., Inc., C.A. Ga. 1976, 543 F.2d 1111; Piper v. US, C.A. Tex. 1968, 392 F.2d 462; Ramsey v. Cooper, 1977, 553 F.2d 237; Harris v. Atlantic Richfield Co. D.C.N.C., 469 F.Supp. 759; Ratner v. Young, D.C. Virgin Islands, 1979, 465 F.Supp. 386; Reube v. Pharmicodynamics, Inc., D.C. Pa. 1972, 348 F.Supp. 900; others such like.**

So, it is the contentions

of the petitioner that the district court for the northern district of Georgia has departed from the usual course of judicial proceedings and the United States Court of Appeals for the Eleventh circuit has sanctioned the district court in such a departure so as to call upon this courts supervisory powers.

Moreover, while the district court dismissed the action for failure to state a claim, the complaint did not fail to state a claim under **42 USCA ss 3604 & 3605 (42**

USC ss 3601 et seq.. In the complaint, plaintiff has alleged generally that the respondents refused to finance rent or aid in a residential real estate related transaction when petitioner's affidavits being tendered to the respondents and attached to the complaint clearly demonstrated that petitioner qualified for benefits and in the amount sought. Petitioner further alleged in the complaint that the refusal to provide benefits to petitioner was undertaken because of petitioner race and sex. Clearly, such allegations from a plaintiff in a Fair Housing suit state a claim upon which relief may be granted under Federal Fair Housing Act because to state a claim under the Federal Fair Housing Act, petitioner need only allege that: (1) petitioner is a member of the protected class or is a member of a racial minority, (2) Petitioner applied for and was qualified to receive financing from the respondents and meet all necessary qualifications, (3) respondents refused to do business with petitioner despite petitioner's financial qualification to pay back the loan, (4) the res-

pondents continue to do business with applicants who have similar financial qualification as the petitioner and (5) the property of which the petitioner sought to purchase remained for sale hereafter. **Asbury v. Brougham, 1989, 866 f.2d 1276; U.S. v. City of Parma, 1980, 494 F.Supp. 1049, Aff'd, 661 F.2d 562; Casa Marie v. Superior Court of Puerto Rico, 1993, 988 F.2d 252; Soules v. U.S. Dept. of HUD, 1992, 967 F.2d 817; Betsy v. Turtle Creek Assoc., 1984, 736 F.2d 983; Halet v. Wend Inv. Co., 1982, 672 F.2d 1305; U.S. v. Mitchell, 1978, 580 F.2d 789; U.S. v. City of Black Jack, 1974, 508 F.2d 1179.others such like**

In the instance case, the United States District Court and sanctioned by the United States Court of Appeals for the Eleventh Circuit has wholly failed to recognized petitioner's prima facie suit under the Federal Fair Housing Act and accordingly, again, the United States Court of Appeals has departed from the normal course of jud-

icial procedure and has sanctioned the lower court in such a departure. Having departed from the usual course of judicial procedure, The United States Court of Appeals has rendered a decision which is in conflict with any other court of appeals and has sanctioned the lower court in such conflict.

Furthermore, the subject lower courts have proposed to make their conflicting ruling a decision on the merits of the litigation when infact motion to dismiss for failure to state a claim does not facilitate a decision on the merits of any subject of litigation. **Knight v. Storex Sys. Inc., 1990, 739 F.Supp. 739; Briggs v. Sterner, 1981, 529 F.Supp. 1155; Stephenson v. Barringer, 1991, 758 F.Supp. 657; McClelland v. Watlin Latter Co., 1990, 729 F.Supp. 1316; Duval Stell Prod. v. Jaraj Dalmatin, 1989, 718 F.Supp. 159; LaRose v. Sponco Mgf., 1989, 712 455, PLC v. James M Bridges Ltd., 1991, 766 F.Supp. 113; Inter-Americas Ins. Co. v. Xycor Sys. Inc., 1991, 757 F.Supp.**

1213; Deem Lockheed Corp., 1989, 749 F.Supp. 53; Newport Components v. NEC Home Electronics, 1987, 671 F.Sup|p. 1525. Thus, evidence is not properly considered on motion to dismiss for failure to state a claim because court is only authorized to review the pleadings or the complaint alone without seeking to reach the merits of the action. Decisions on the merits of subjects are normally obtained on summary judgement or jury trial and the court failed to consider the lone motion for summary judgement filed which was filed by petitioner.

Rule 10 of the rules of the United States Supreme Court provides that the Supreme Court may consider a petition for certiorari where, as here, A court of Appeals has departed from the usual course of judicial proceedings and has rendered a decision that conflict with another court of appeals and has sanctioned a lower court in such departure or conflict that I call upon this court's power of supervision to issue writ certiorari to E-

leventh Circuit Court of Appeals to begin to salve petitions rights of a gross abuse of due process by the lower courts. Likewise, **28 USCA ss 1254** that cases in the court of appeals may be review by certiorari to the Supreme Court before or after judgement and accordingly this case may be review by certiorari upon this application under **28 USCA ss 1654** and review is hereby requested.

Finally, the lower courts demonstrate no compassion to the petitioner for the wrongs done to the petitioner but instead the lower courts attack the petitioner with sacasm. The cases cited in the Court of Appeals order and judgement does not in any way support the court's judgement but instead the precedent cited by the courts would only support petitioners claim against the respondents. For example, the court held that district judge Hunt is immune from suit and therewith citing cases from **42 USC ss 1983** when this is not a **1983** suit against judge Hunt. Judge Hunt may be sued under **28 USC ss**

144. Likewise the lower courts held that HUD is immuned from suit however one of the cases cited in the courts order along with others cited by petitioner clearly demonstrate that HUD is not immune from suit whether the petitioner will be ultimately successful. Court must have jurisdiction even to permit the respondents' defenses if them have any an none was sufficiently presented.

The lower courts' decision was riven along irregularity and therefore donot allow petitioner ground to hope for a recover thus leaving petitioner no legal recourse for wrongs practiced by the respondents. In addition, this is not the only case filed by the petitioner at this time in which the lower courts show no compassion required by constitution and law and a malicious decision which conflict with precedent of the subject of the additional litigation is rendered causing the litigation to become excessively expensive and therefore, as to the foregoing cited ante-herein this petition for certiorari should be **GRANTED**.

Service of process made upon a defendant by the she riff of the county in which the defendant resides or maintain an office is sufficient service under both Federal and State law. **Cannon Mfg. Co v. Cudahy Packing Co, 267 U.S. 333, 45 S. Ct. 250, 69 L.Ed. 634:**

in this case the Supreme Court ruled that service of process is sufficient if the process is served at any of the agencies of a parent corporation regardless of which of the parent corporation's agencies the wrong occurred. So, plaintiff/petitioner was not required to address process to any special person to effect service on an agency of Chase Manhattan Mortgage Corporation. Likewise with respect to service of process on respondent Resurgence Marketing and Real estate, this defendant/respondent waived formal service by submission under rule 12 (g) Fed. Rul. Civ. Proc., and accordingly, the district court had jurisdiction over each defendant in court below and this fact may be amplified in briefing and oral argument in this court.The qualification to purchase a home

while one is a Chapter 13 bankrupt debtor is a privilege secured by 11 USC ss 525 as, where the goverment does not prohibit any activity, engagement in such activity is a privilege distinguished by the fact that there is no prohibition against the activity. Likewise the qualification to withhold income tax returns and information is a privilege secured by 26 USC ss 6103 and neither bankruptcy status nor income tax returns may be used to lessen the purchasing power of prospective homebuyers. A yearly tax statement, such as a W2 forms or 1099 forms are sufficient to establish gross or average gross yearly income and exhibits attached to plaintiff/petitioner's complaint clearly demonstrated that petitioner qualified financially for financing with respect to bankruptcy status provided petitioner's purchasing power was not measured by net than gross income. 16 CFR ss 203.33 only requires that applicant for financing and insurance demonstrate qualifications by a measure of applicant's gross monthly income. Wherefore, petitioner petition's for certiorari.